

RULES COMMITTEE
of the
Suffolk County Legislature

Minutes

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A regular meeting of the Rules Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, 725 Veterans Memorial Highway, Smithtown, New York, on **August 5, 2004**.

Members Present:

Legislator Allan Binder • Chairman

Legislator Michael Caracciolo • Vice•Chair

Legislator Andrew Crecca

Legislator Jon Cooper

Legislator William Lindsay

Also in Attendance:

Mea Knapp • Counsel to the Legislature

Alexandra Sullivan • Chief Deputy Clerk/SC Legislature

Ellen Martin • Aide to Legislator Binder

Nicole DeAngelo • Aide to Presiding Officer Caracappa

Kim Kennedy • Aide to Legislator Caracciolo

Greg Trunz • Intern to Legislator Crecca

Paul Perillie • Aide to Democratic Caucus

Jim Spero • Director/Budget Review Office

Kevin Duffy • Budget Review Office

Ben Zwirn • Assistant County Executive

Adam Santiago • County Executive Assistant

All Other Interested Parties

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Minutes Taken By:

Alison Mahoney • Court Stenographer

(*The meeting was called to order at 3:08 P.M.*)

CHAIRMAN BINDER:

Okay, the Rules Committee will come to order. I don't have any cards, there is no one out there, that's a good thing.

LEG. CRECCA:

Well, someone is out there.

CHAIRMAN BINDER:

Well, not anybody who wants to speak, I don't see a hand raised.

Okay, the first two pieces of legislation have, I think, been combined, so I guess we have to talk about how to handle this. Counsel, where are we, and actually we do have the sponsor of one of the bills as a member of the committee, Legislator Caracciolo. But the first two bills have been combined into one piece of legislation and it's going to come as a CN, so the question is how to handle this. I mean, if we know that's going to happen or do we want to just •• or do we want to put these out anyway on to the floor and have the possibility of consideration or just let the other, the CN •• the first two actually have been combined into one.

LEG. CARACCILOLO:

If you would, Mr. Chairman?

CHAIRMAN BINDER:

Yeah, Legislator Caracciolo.

LEG. CARACCILOLO:

Thank you. As I put on the record yesterday in the Environment Committee, Legislator Fisher and I are consolidating these two resolutions into one resolution, we are requesting a Certificate of Necessity. I have been told that the new resolution is being reviewed by the Executive staff and we should know probably within the next day whether or not they will issue a Certificate of Necessity.

In view of that, I would suggest that we take the same action here that we took yesterday and that is discharge both of these resolutions without recommendation so at least we have something on the floor because we do run into a calendar issue if we don't get something before the Legislature by Tuesday; isn't that correct, Counsel? Because these are both referendums.

MS. KNAPP:

The absolute final date for the Board of Elections to have anything is September 27th and, you know, that's leaving it to the very last moment. When you take into account the full Legislative process, the possibility of a veto override, then, you know, you're coming very close to that deadline.

LEG. CARACCILO:

If I could just as an addendum, Legislator Fisher did request, as I did, that we take that action on each of these two resolutions to discharge without recommendation so that at least at a minimum we have two live resolutions, one of which to work with in terms of consolidating a CN.

LEG. LINDSAY:

Mr. Chair?

CHAIRMAN BINDER:

Yes, Legislator Lindsay.

LEG. CRECCA:

Put me on the list, too.

LEG. LINDSAY:

Could I either ask either Counsel or one of the sponsors •• because I'm not on Environment Committee, I don't have my book •• what the difference is between the two bills.

LEG. CARACCILO:

I will defer to Counsel because since Legislator Fisher originally introduced her SOS legislation, it has been substantially modified as a result of the conferences she and I have had amongst

ourselves and with Mr. Deering. So I'll let Counsel elaborate.

MS. KNAPP:

Legislator Fisher's bill was a total of \$75 million, I believe, and Legislator Caracciolo's was \$50 million for Farmland. Legislator Fisher's, Vioria•Fisher's, dealt with Open Space, I believe it had some Greenway money •• as a matter of fact, I can bring it all up if you'd like and we can go through it in a little bit more detail. But what they've proposed to do with the new CN is to combine them and we have a \$90 million bill which I believe includes \$50 million worth of Farmland.

LEG. CARACCILOLO:

Right. The new version as it stands right now, subject to agreement by the Executive Branch, would increase the total to 90 million, it would include 50 million for Farmland Preservation, what is it, 35 million •• no, 30 million for Open Space and 10 million for Greenways improvements. These would not •• this would not be money for land acquisitions as I understand under Greenways, this would actually be an infrastructure fund, so that many of the parks that we currently have we could actually equip and make them something more than passive parks.

LEG. LINDSAY:

And the funding source?

LEG. CARACCILOLO:

This would be a voter referendum and it would be bonded through the Environmental APF money through the State.

LEG. LINDSAY:

So we would be ••

LEG. CARACCILOLO:

It would be a low interest bond act. We don't have anybody from Budget Review, but my recollection is the last time we talked about this in committee we were looking at something in the area of about 2%, and the first 18 months is essentially an interest•free loan.

LEG. LINDSAY:

There was some talk, at least with Legislator Fisher's resolution, initially about extending the Quarter Cent into the ••

LEG. CARACCILOLO:

Yes, and I sponsored ••

LEG. LINDSAY:

•• fifteen years; is that part of this?

LEG. CARACCILOLO:

She sponsored that resolution, I sponsored a Home Rule Message. The problem with both of us, of those resolutions, is that apparently the State Legislature would not have sufficient time, given what they are dealing with Albany right now, to modify the existing State legislation which was sponsored by Legislator •• I mean, Assemblyman Englebright to reflect a drawdown in advance. In other words, it was both our intentions, if we didn't go this route, to advance for another 13 years the Quarter Percent Fund but with a mechanism that would allow us to draw down before 2013 monies pledged by sales tax receipts subsequent to ••

CHAIRMAN BINDER:

Future revenue.

LEG. CARACCILOLO:

Right; the State legislation doesn't have any ability to provide us with that mechanism.

LEG. LINDSAY:

Okay, but is one •• isn't exclusive of the other.

LEG. CARACCILOLO:

Well, for this year they will be. In other words, this ••

LEG. LINDSAY:

But I mean even if you had this future revenue stream, you would still have to bond out that revenue stream and pay the interest on the bonds now.

LEG. CARACCILO:

Well, technically you're right, that's correct; technically that's correct, yes. But you would just be pledging a different •• you know, one's a taxpayer•based property tax bonded indebtedness, the other one is a sales tax.

LEG. LINDSAY:

So is the intention at some future date to go ahead with the Quarter Cent extension?

LEG. CARACCILO:

It would be my hope that we can revisit it next year, because I think the amount of money we currently have •• and Mr. Isles gave us a number yesterday in committee, it was 35 million that we have current, more funds for our acquisitions; that's clearly not going to be sufficient given the ambitious direction that we'd like to go given the lapse we had for about 18 months in '02/'03. So that's why this is really, you know, time sensitive and important to act on today.

CHAIRMAN BINDER:

Legislator Crecca.

LEG. CRECCA:

I apologize, the reason I'm sitting down here is because I'm just looking at some resolutions, I'm looking at reading them. First of all, I have a request that if Budget Review is in the building if they could come in.

CHAIRMAN BINDER:

Okay.

LEG. CARACCILO:

I could anticipate ••

CHAIRMAN BINDER:

Ellen, see if you can get them.

LEG. CRECCA:

Yeah, I'll get there in one second, Mike, but we're talking about a lot of money, so.

LEG. CARACCILOLO:

I'll tell you what it's going to cost the average taxpayer, because that's really the bottom line.

LEG. CRECCA:

All right, but let me ask the other question first because it puts •• it comes first and that is the two bills that are before us right now, I'm a little confused because it sounds like the CN is different than what we have before us, or the proposed CN I should say. 1239 •• and it doesn't matter, Mike, you can answer the question or Mea.

LEG. CARACCILOLO:

Do you have it on the screen?

LEG. CRECCA:

I have paper.

LEG. CARACCILOLO:

I haven't seen that, Andrew.

LEG. CRECCA:

Fisher's bill?

LEG. CARACCILOLO:

I haven't seen the corrected copy.

LEG. CRECCA:

I don't know if this is the corrected copy; this says amended as 4/23.

MS. KNAPP:

Yeah, that's not ••

LEG. CARACCILOLO:

No, that's not it.

LEG. CRECCA:

That's why •• okay. Because I was •• and I apologize, this is the only bill •• I'm very familiar

with this bill and was against this bill, so I don't know •• what is the new bill? Counsel, you said you could go through it in detail? If you would go through both bills in detail with me I would appreciate it, since I have not read the revised or amended copy.

MS. KNAPP:

Do you have 1239 or 1330 that you're dealing with there?

LEG. CRECCA:

1239 first.

MS. KNAPP:

1239 and you have the April amendment.

LEG. CRECCA:

April 23rd.

MS. KNAPP:

Okay. Now, the problem with computers is the one time that you can't get them to work right. I wonder if I could just leave the room and get it on paper and I'll be back in just a moment.

LEG. CARACCILOLO:

She's making copies now.

MS. KNAPP:

Oh, is she; MJ is? Thank you.

LEG. CRECCA:

Thanks. Are you familiar •• Mike, are you familiar with the changes to yours?

LEG. CARACCILOLO:

Mine?

LEG. CRECCA:

No, no, I didn't mean it that ••

LEG. CARACCILOLO:

No, no, no, no, no.

LEG. CRECCA:

That's the way it sounded, I'm saying if you want to tell me about 1330.

LEG. CARACCILOLO:

Sure, it's very simple; it's a straightforward \$50 million Farmland Preservation Bond Act.

LEG. CRECCA:

Would it all be issued this year?

LEG. CARACCILOLO:

Typically, once the voters approve it, it would be issued basically on a pay•as•you•go basis when we needed the money, that would be left up to the department of ••

LEG. CRECCA:

Is this bill just for a referendum?

LEG. CARACCILOLO:

Yes, both of these bills are just a referendum.

LEG. CRECCA:

And this would be a referendum to ask the tax •• individually there would be two separate ••

LEG. CARACCILOLO:

Well, right now, that's why we met and we said rather than to possibly confuse the electorate, we would consolidate these two resolutions into one encompassing the SOS Fund that Legislator Fisher was sponsoring with the Farmland Preservation initiative that I know is very important. If we're going to be serious about preserving farmland in Suffolk County, we know that there's a threshold, we have to have 30,000 acres, all of the planning studies have said that; right now we have about 14,000 acres. This has got to really be the beginning of the final push if the

County is serious about preserving our agricultural heritage and that's why I would like to see \$50 million set aside for that purpose. Development pressures are increasing, they're enormous in Riverhead Town, we've seen the price of farmland go from about 12, \$13,000 an acre three years ago to about \$30,000 an acre and the longer we wait the more it's going to cost. It's a good financial environment to bond this money now.

LEG. CRECCA:

Okay, so yours is •• calls for 50 million and the new 1239 calls for 75 million?

MS. KNAPP:

No. I have Legislator Vilorio•Fisher's in front of me. Legislator Caracciolo's called for 50 million for farmland.

LEG. CRECCA:

Okay.

MS. KNAPP:

Legislator Vilorio•Fisher's original bill was \$62 million; \$30 million was for Open Space Preservation and \$16 million was for •• it was for Land Acquisition for use as hamlet greens, hamlet parks ••

LEG. CARACCILOLO:

That's out.

MS. KNAPP:

•• pocket parks, but that was her bill, this is the •• that's the April version of her bill, and it was all bond money and my recollection was it all had to be spent.

LEG. CRECCA:

I don't care what it was, I care about what 1239 is now.

MS. KNAPP:

That's 1239.

LEG. CRECCA:

1239; oh, that's ••

MS. KNAPP:

Well, that's •• yes.

LEG. CARACCILOLO:

That's the original version, I think.

CHAIRMAN BINDER:

That's before they're combined.

MS. KNAPP:

No, this is ••

LEG. CRECCA:

They're not combined yet. First I want to find out what we're voting on which is 1239.

MS. KNAPP:

Unless the website is not up•to•date, because I'm not working with my own databases here, I'm working with the County website and that shows an April 22nd amendment and that's the one that I'm looking at. If we get ••

LEG. CARACCILOLO:

It's irrelevant at this point. It's irrelevant if ••

LEG. CRECCA:

How is it irrelevant if •• because we're not voting on the CN now.

LEG. CARACCILOLO:

No.

LEG. CRECCA:

If we get a CN, we voted on something completely different, right?

LEG. CARACCILO:

That's correct. But what I said earlier was so that we have something before the Legislature and don't lose the opportunity to present to the public should a CN fail, okay, we have something to advance to the public, either one or both of these resolutions, for them to determine which of the two or both they would like to support.

LEG. CRECCA:

If the CN doesn't come forward or if the CN fails ••

LEG. CARACCILO:

Right.

LEG. CRECCA:

•• we still have another meeting in two weeks.

LEG. CARACCILO:

Right, and that would be the absolute, absolute outside chance of us adopting anything.

LEG. CRECCA:

Right, I agree with you. I'm just wondering if we shouldn't table these today, and I'm not •• I know you want to move them out, Mike, so I'm not saying that.

LEG. CARACCILO:

Yes. My preference and Legislator Fisher's preference is to move these resolutions, at least have them on the floor and then we can work from there.

LEG. CRECCA:

All right. Then I need to start out by seeing a current copy of 1239. Mike, yours said yours is a straight \$50 million •• a referendum for a \$50 million bond, so that I can •• I don't need to see that one.

LEG. CARACCILO:

Okay, it's just been handed out.

MS. KNAPP:

1239.

LEG. CARACCILOLO:

As you will note, I am now the prime sponsor of 1229 (sic), not Legislator Fisher, if you look at the corrected copy. When we had a meeting of the minds on this ••

LEG. CRECCA:

Oh, this isn't eligible for a vote anyway, is it?

LEG. CARACCILOLO:

Yes, it is, it met the corrected copy deadline. Not this as you see it •• I stand corrected •• not •

LEG. CRECCA:

So why is this on our agenda then?

LEG. CARACCILOLO:

Because this is what we're requesting a CN on. You wanted to know what will be here Tuesday to vote on.

LEG. CRECCA:

Okay.

LEG. CARACCILOLO:

This is it.

LEG. CRECCA:

So you don't care if we table 1239 because this is •• I can't vote for Vivian Fisher's bill.

LEG. CARACCILOLO:

It's not Vivian Fisher's bill anymore, that's what I'm telling you.

LEG. CRECCA:

This bill isn't eligible ••

LEG. CARACCILOLO:

1239 is now Legislator Caracciolo and ••

LEG. CRECCA:

I see that, but that bill is not before us today.

LEG. CARACCILOLO:

Counsel, what's before us?

MS. KNAPP:

No, that is. It's probably filed as of this moment, but I believe what Legislator Crecca is saying is it's not before him on this agenda, and that's correct.

LEG. CARACCILOLO:

Okay.

LEG. CRECCA:

That's all I meant, Mike; legally this bill is not ••

LEG. CARACCILOLO:

Technically; you're being technical, that's all.

MS. KNAPP:

The amendment ••

LEG. CRECCA:

Not technical, I've got to know what I'm voting on.

LEG. CARACCILOLO:

Okay.

LEG. CRECCA:

Are we voting on this 1239?

LEG. CARACCILOLO:

No.

LEG. CRECCA:

How can we?

MS. KNAPP:

1239 as it is presently amended was amended after the amended copy deadline, which would have been Monday at five o'clock.

LEG. CARACCILOLO:

Right.

MS. KNAPP:

So that 1239 as it is presently filed is not technically eligible for a vote until the next cycle.

LEG. CRECCA:

Right. So is this •• technically this is not before us now then? I'll go to the Chairman.

LEG. CARACCILOLO:

What's 12 •• what is before us, good question; I mean, which 1239 is before us?

CHAIRMAN BINDER:

Technically what I would think would be before us is that bill which was passed out of committee in the form, in the form that is was before it was changed. The •• no, let me finish.

LEG. CRECCA:

I agree with you, but it still has to be tabled subject to call.

CHAIRMAN BINDER:

Let me finish.

LEG. CRECCA:

This bill doesn't exist any more.

CHAIRMAN BINDER:

I understand that, so here's what would happen. If we pass out 1239, if we report it to the full Legislature, it would only be •• listen, let me finish.

LEG. CRECCA:

It's not eligible for a vote.

CHAIRMAN BINDER:

It is eligible for a vote only in the form that it was before it was changed.

LEG. CRECCA:

Yes.

CHAIRMAN BINDER:

So on the floor it would be eligible as 1239 pre the last change.

In the form that it now exists, it is not •• it will not be eligible for a vote, that's agreed. So now ••

LEG. CRECCA:

Point of order. Right, if it's a CN that's a different story. Point of order, though.

CHAIRMAN BINDER:

Point of order.

LEG. CRECCA:

The point of order is that I would agree with you except for this fact; once this new 1239 is filed, this amended copy ••

CHAIRMAN BINDER:

Right, now you have a new bill.

LEG. CRECCA:

You have a new bill, the other one doesn't exist anymore.

CHAIRMAN BINDER:

Right.

LEG. CRECCA:

So that neither one is eligible without a CN. There is no old bill anymore, this one is just not eligible before us.

CHAIRMAN BINDER:

Right, because it has been amended. The old one, the old 12 •• the 1239 that was eligible for floor consideration no longer exists because it has been amended officially in the files of our Clerk, is what Legislator Crecca is saying. So the question really is what we have before us is a bill that's not eligible for floor consideration.

LEG. CRECCA:

Madam Clerk •• I mean, Madam Counsel.

CHAIRMAN BINDER:

I would at that point agree with you; I would agree with your assessment.

LEG. CARACCILOLO:

All right. May I?

LEG. CRECCA:

I'll yield to Legislator Caracciolo.

CHAIRMAN BINDER:

Legislator Caracciolo.

LEG. CARACCILOLO:

Thank you. I understand ••

LEG. CRECCA:

For the purposes of legal inquiry.

LEG. CARACCILO:

I understand the dialogue that has just taken place. My primary concern, and I know it's Legislator Fisher's primary concern, is that we take action this Tuesday. In order to do that, Counsel, what would be the best mechanism to put forth what is now in this corrected copy, 1239; do I file a late starter on Tuesday and request a CN on that? What is the best way to do this?

MS. KNAPP:

Well, I've just gotten the absolute most current version of 1239 that is, quite frankly, eligible for a vote without a CN. And what Legislator Vilorio•Fisher did at ten to five •• and again, I was just reminded of that •• was that she added Farmland Preservation to her original bill, she increased the amount of the program total from 46 million to 75 million, and the amount that she put in for Farmland was •• let me get this right •• we're up to 75 million total. So the difference between ••

LEG. CARACCILO:

Thirty five million.

MS. KNAPP:

Thirty five million? Thirty five million for Farmland.

LEG. LINDSAY:

So it's more than a \$90 million bill.

LEG. CARACCILO:

No, it's 75 total, Bill.

MS. KNAPP:

On this bill it's 75.

CHAIRMAN BINDER:

Yours is 90.

LEG. CRECCA:

The bill I'm looking at says 50 million for Farmland.

LEG. CARACCILOLO:

That's mine, right?

MS. KNAPP:

That's the new one.

LEG. CRECCA:

Right, this bill was filed 8/5.

MS. KNAPP:

Yes.

LEG. CARACCILOLO:

And that's the one that's not eligible, she's saying the one that is eligible ••

LEG. CRECCA:

It's not eligible because it doesn't exist anymore.

MS. KNAPP:

Well, if we did the filing you're right. Have we filed it yet; we did, just now? We filed it; you're correct, then.

LEG. CRECCA:

So the old bill doesn't exist.

LEG. LINDSAY:

If you put a new number on the compromised bill you can do it.

LEG. CARACCILOLO:

That's right.

LEG. CRECCA:

Right, but it doesn't matter anyway because this bill supercedes the other bill. Mike's bill •• I hate to refer to it that way •• your 1239 supercedes anything that came before it.

LEG. LINDSAY:

No, no, his is 13 ••

LEG. CRECCA:

No, he also is now the sponsor of 1239.

CHAIRMAN BINDER:

He can't be the sponsor, he can be a cosponsor of 1330.

LEG. CRECCA:

No, he is the sponsor; you can do that.

LEG. CARACCIOLO:

We changed sponsorship.

LEG. CRECCA:

With the consent of the sponsor you can do that. So the bottom line is is that 1239 would have to be done by a CN or it would have to be ••

MS. KNAPP:

He's correct.

LEG. CRECCA:

•• comply with the discharge rules otherwise.

MS. KNAPP:

Because it's been filed.

LEG. CARACCIOLO:

I believe I stated that earlier, that we have made a request for a CN.

LEG. LINDSAY:

But 1330 is still eligible.

LEG. CRECCA:

1330 is still eligible to be voted out of this committee.

LEG. CARACCILOLO:

Right.

LEG. CRECCA:

Now, with that said, I have some questions for Budget Review since they're here. So the bottom line is, Mr. Chairman, I would say that 1239 is not eligible for a vote before the Rules Committee today and 1330 is, that would be ••

CHAIRMAN BINDER:

Why don't you start your inquiry, I'm going to consult with Counsel and then I'll give you a ruling on that ••

LEG. CRECCA:

Excellent.

CHAIRMAN BINDER:

•• from the Chair.

LEG. CARACCILOLO:

(Inaudible).

CHAIRMAN BINDER:

Actually, Chairs are supposed to rule, we don't do that around here for some reason but the Chair is supposed to make the rules. So why don't you •• Legislator Crecca, why don't you have a dialogue with ••

LEG. CRECCA:

Mr. Spero, and I think •• I can't see who's hiding behind him but I think it's Kevin. Is it? Hi, Kevin. Jim, how much money is currently in our Land Acquisition Program? And when I say that I'm referring specifically to I guess what you'd call Open Space and Farmland.

MR. SPERO:

You mean the total funds available for expenditure, I presume.

LEG. CRECCA:

Yeah; you know, a couple million here or there, I can live with that.

MR. SPERO:

When we did our report back on the Capital Program back in May, we had a chart in there that showed at that time the total funding that was still available for various programs. If you like, I'll •• the bottom line at that time was \$57 million and that broke down, we had three components of the old Quarter Cent Water Quality Program where we're still funding.

LEG. CRECCA:

Right.

MR. SPERO:

Those three components were 6.8, 2.6 and 9.9. And the old Farmland Preservation Program ••

LEG. CRECCA:

Right.

MR. SPERO:

•• there was \$484,000 available.

LEG. CARACCILO:

That's low.

LEG. CRECCA:

That's low. No, I agree, Mike, that's why I wanted to hear this.

MR. SPERO:

The Parkland Program ••

LEG. CRECCA:

Isn't everything combined now or it's still not; is it still segregated?

MR. SPERO:

Yeah, they're all •• these are segregated, that's right, these are different program components.

LEG. CRECCA:

Those are the dedicated funds, okay. Isn't there one that's an open fund?

MR. SPERO:

That's the Land Preservation Partnership.

LEG. CRECCA:

How much is in that?

MR. SPERO:

Not the Land Preservation, Multifaceted.

LEG. CRECCA:

I knew exactly what you meant, the Multifaceted Program, yeah.

MR. SPERO:

You know what I meant. At that time it was 13.8 million back in May.

LEG. CRECCA:

Oh, wow.

LEG. CARACCILO:

Okay. Now, if I can ••

LEG. CRECCA:

Wait, let me just make sure I understand it, Mike. We've got about •• in May you had about 14 million or 13.8 million in Multifaceted.

MR. SPERO:

We also have funding available from the new Quarter Percent Program for farmland and that

balance was eight million.

LEG. CRECCA:

Okay.

MR. SPERO:

And a \$2 million balance in that same program for open space. Plus we had other programs, Affordable Housing, 3.2 million; Greenways Farmland, 5.3 million; Greenways Parkland, 850,000; Greenways Open Space, 1.1 million. So these are available funding balances that existed back in May.

LEG. CRECCA:

What I would request of Budget Review, preferably by close of business Monday, would be a current accounting of all the funds broken down so that the whole Legislature will have those available to them on Tuesday. I think that would be imperative, if there is a CN coming we should be prepared for that.

MR. SPERO:

We'll get these updated for you.

LEG. CRECCA:

That would be great. So •• and I think that would only, you know ••

LEG. CARACCILO:

Bolster the case to take action now.

LEG. CRECCA:

Yes. But now, with that said ••

LEG. CARACCILO:

Would you suffer an interruption, because I have to take a call.

LEG. CRECCA:

Sure.

LEG. CARACCILO:

I just want to reiterate what I said earlier.

LEG. CRECCA:

Through the Chair.

LEG. CARACCILO:

Through the Chair? Thank you, Mr. Foley. Mr. Isles did state •• we had similar questions yesterday in the EPA Committee, current fund balances, all funds. Given what has taken place between the spring of this year and today's or yesterday's date, about \$35 million. So that should be borne by the facts when you make your inquiry, Jim.

The only other question I want to ask now is if we bonded 50 or \$75 million, what is the cost to the average taxpayer?

MR. SPERO:

I'm having trouble locating the Bonds Program that let's me calculate debt service cost; it's not in the directory I thought it was in.

LEG. CARACCILO:

Well, use our rule of thumb, Jim.

MR. SPERO:

Well, the rule of thumb is \$1.81 for every million, but I need to calculate how many millions we're talking about so I need to run the program based on a \$50 million issue or a \$75 million issue and then I can back into what the approximate taxpayer impact would be.

LEG. CARACCILO:

You need some time to do that?

MR. SPERO:

Yeah.

LEG. CRECCA:

Maybe you would want it attached to the bill anyway?

MR. SPERO:

Can you move on and can I ••

LEG. CARACCIOLO:

Well, there should be, you're absolutely right, there needs to be a fiscal impact statement.

LEG. CRECCA:

I think under our own rules it can't be passed without it.

LEG. CARACCIOLO:

Absolutely, absolutely. I'll be back in a few minutes.

MR. SPERO:

I will attempt to try to find this file.

LEG. CRECCA:

Why don't we skip over it until we get that number, too.

LEG. CARACCIOLO:

Can we recess for five minutes?

LEG. CRECCA:

Whatever.

CHAIRMAN BINDER:

I will give you a five minute recess, Legislator Caracciolo.

LEG. CARACCIOLO:

Thank you.

CHAIRMAN BINDER:

Take care of what you've got to take care of.

(* Brief Recess Taken: 3:34 A.M. • 3:42 P.M. *)

CHAIRMAN BINDER:

Okay, we're back in session. Legislator Caracciolo has a question for Jim Spero.

LEG. CARACCIOLO:

Thank you. I would just like to make sure that Budget Review has Fiscal Impact Statements for the Legislative resolutions that have been sponsored by myself and Legislator Fisher, including the new 1239 by Tuesday's meeting?

MR. SPERO:

We'll have them prepared, we'll make sure of that.

LEG. CARACCIOLO:

Thank you; yeah, because we have to have them.

MR. SPERO:

Yes.

LEG. CARACCIOLO:

Mr. Chairman, on the resolution I would like to make a motion, as I did previously, to discharge without recommendation.

CHAIRMAN BINDER:

Let me ••

LEG. CRECCA:

Which resolution?

LEG. CARACCIOLO:

Well, have we gotten •• made a determination?

CHAIRMAN BINDER:

Right, I have not ruled so.

LEG. CARACCIOLO:

Go ahead.

CHAIRMAN BINDER:

Before I entertain a motion, let me rule on 1239. If we go back to the point of order, the point of order was made by Legislator Crecca as to 1239 so I did some consultation with Counsel and the discussion centered on whether it was ripe for consideration for referral or reporting out to the full Legislature, and one of the reasons we exist as a Rules Committee is to make sure that those things that go to the floor are ready for the floor in some way. So because 1239 has changed, it's been filed late, had it not been filed late we would have something ready to go to the floor. We don't have a bill that's actually ready to be reported out of the committee, so I'm not going to entertain a motion to report on 1239. I will on 1330 because that is timely filed and ready to go to the floor.

So on 1239, I'm just not going to entertain a motion to report, we'd have to •• so whatever is going to happen on the floor, it probably would have to be by CN or at the next •• or there could be a discharge, that's another question, or at the next meeting of the Rules Committee we can entertain 1239 because it would be timely, unless, again, there is a late change to it that happens after the time for it to be able to go to the floor. And that's really one of the reasons we exist, to make sure that that kind of thing is regulated. So we're at now 1330.

1330•04 • Adopting Local Law No. 2004, a Charter Law adding Article XII•B to the Suffolk County Charter to establish the 2004 Suffolk County Farmland Preservation Fund (Caracciolo).

LEG. CARACCIOLO:

I make a motion to discharge without •• or report.

CHAIRMAN BINDER:

Report. Legislator Caracciolo makes a motion to report 1330.

Do I have a second?

LEG. COOPER:

Second.

CHAIRMAN BINDER:

Legislator Cooper seconds. Let me ask Counsel if there are any legal, outstanding legal questions on 1330 that could effect consideration?

MS. KNAPP:

No, not to my knowledge.

LEG. LINDSAY:

Could I ask a question?

CHAIRMAN BINDER:

Legislator Lindsay.

LEG. LINDSAY:

Really to the sponsor, and I think I know the answer but if the CN on the new 1239 comes over, do you intend to withdraw 1330?

LEG. CARACCILO:

Yes, I do.

CHAIRMAN BINDER:

So we have a motion to report, we have a second? Any other comments? If not, all those in favor?

LEG. CRECCA:

On the motion?

CHAIRMAN BINDER:

Legislator Crecca, on the motion, 1330.

LEG. CRECCA:

Under the proposed CN that's coming over which is on the new 1239; is that right?

LEG. CARACCILO:

Well, it will be 1239 or a close facsimile to 1239.

LEG. CRECCA:

Okay.

LEG. CARACCILO:

The only thing •• there are a couple of things that could change it, the amount could change, it could go from 75 million to a greater number.

LEG. CRECCA:

Okay. How much is anticipated of that will be farmland?

LEG. CARACCILO:

A minimum of 35 million.

LEG. CRECCA:

Okay. And this 1330 is 50 million?

LEG. CARACCILO:

Fifty million.

LEG. CRECCA:

Okay. Do we have any estimate of what is needed? See, the problem I have here •• and again, I'm all for putting this to the voters, so I don't want to give the misimpression.

LEG. CARACCILO:

Right.

LEG. CRECCA:

I'm just concerned here, I don't sit on the Environment Committee and this didn't go through Budget •• and I'm not saying it should have •• but one of my concerns is we can grab the hundred million for Farmland, I don't know •• without having Pat Zielenski here or the right

people to answer that, I don't know how much is needed for Farmland Preservation.

LEG. CARACCILO:

Okay. That's a fair question and I could assure you that those are questions and conversations I've been having with Mr. Deering who

Ms. Zielenski reports to, okay, about a minimum range for Farmland Preservation.

LEG. CRECCA:

She doesn't report to him •• trust me, I know this issue inside out •• she reports to Tom Isles.

LEG. CARACCILO:

Who reports to him; okay, whatever.

LEG. CRECCA:

That bill died, but I understand your point and I know Mike is very knowledgeable, so I don't say it that way.

LEG. CARACCILO:

I think it's fair to say that Mr. Deering, as the Executive representative who I've had these discussions with ••

LEG. CRECCA:

Okay.

LEG. CARACCILO:

•• has indicated to me that he would support a minimum of \$35 million for farmland, I have been lobbying for more and that's where we're at.

LEG. CRECCA:

Okay. And just so you know, too, I would suggest that, Mike, you might want to have Pat Zilenski ready at the meeting on Tuesday.

LEG. CARACCILO:

Okay, and we'll have those fund balances for everybody, you know, all the funds, exactly what we have and why we need this additional money.

LEG. CRECCA:

And for the record, I intend to abstain on 1330, but I certainly will give much consideration to both •• a CN if it comes over and this bill if it is so discharged to the floor, I'm just not comfortable at this time with the dollar amount not knowing what's needed, I think it's a little premature.

CHAIRMAN BINDER:

There is a motion and a second to discharge 1330 •• not discharge, report 1330 to the floor for consideration at the next Legislative meeting. All those in favor? Opposed? Abstentions? One abstention, note Legislator Crecca. ***1330 is reported out (VOTE: 4•0•1•0 Abstention: Legislator Crecca).***

The next legislation, 1544 (sic) ***1454•04 • Adopting Local Law No. 2004, a Local Law establishing Anti•Corruption Act for County contracts (Cooper).***

LEG. CARACCILO:

1454.

CHAIRMAN BINDER:

What did I say? Well, I think this Chair makes everyone dyslexic. 1454, let me just ask Counsel really quick, is there any question on legality, on the extension from three years to ten years?

MS. KNAPP:

No, three years to ten years shouldn't have any impact.

CHAIRMAN BINDER:

Okay. So we have a motion to report by Legislator Cooper, second by Legislator Caracciolo. All those in favor? Opposed?

1454 is reported out (VOTE: 5•0•0•0).

LEG. CRECCA:

Madam Clerk, list me as a cosponsor, please.

CHAIRMAN BINDER:

My comments, I'll just put it here for the moment. As I told Legislator Cooper, I would much more support legislation that didn't increase it to ten years but actually banned someone who was •• did public corruption from coming back to this County, let them go to another County, they don't need to be contracting with Suffolk.

LEG. CRECCA:

He sounds like the County Executive now, doesn't he? But you're still going to vote for this, right?

LEG. COOPER:

I will take that suggestion under consideration. Thank you.

LEG. CRECCA:

You're still going to vote for this, aren't you?

CHAIRMAN BINDER:

Well, yeah, but I don't want to have to amend it and I'm going to call for it •• whatever.

LEG. CRECCA:

You'll work at it.

CHAIRMAN BINDER:

It's best we talk, that's what we're doing.

Okay, so we have **1568•04 • Adopting Local Law No. 2004, a Local Law to ban the purchase, sale and use of Mobile Infrared Transmitters (MIRT's) in Suffolk County (Cooper)**. Is there any question in terms of legality, Counsel?

MS. KNAPP:

As you may know, the County Attorney raised the issue of preemption at one of the committee meetings, so clearly there is a question, a legal question. However, I point out that this is exactly the same section that we used when we passed the cell phone bill that is the New York State Constitution, Article 9, Section 2C•10. So I suppose that I would answer your question by saying that a question has been raised, however this Legislature has used exactly the same

section in enacting somewhat similar legislation in the past.

CHAIRMAN BINDER:

Let me ask outside of our enacting the legislation because, you know, some of us might not agree not only with the legislation but with our former Counsel's feeling on our ability to pass legislation in terms of preemption. And let me make it clear, I very much support •• I don't like to ban a lot of things but banning these MIRTS are, I think, a good thing. But what is Counsel's view in terms of preemption, in terms of the law, if we forget what we've done in the past, what is our Counsel looking at, preemption, what it means and our ability to do this; can you give me your best •• your best thought on whether a preemption argument can be raised in this case.

MS. KNAPP:

Well, clearly a preemption argument can be raised, as it has been raised by the County Attorney's Office.

CHAIRMAN BINDER:

Chances of success, I guess, is a better •• let me be more specific; you're going to make me ask the right question, but that's okay. What are the chances of success, the strength of the argument? There's a lot of ways I can ask this, but we really have to understand anyway, in a general sense, the limits of what we should and shouldn't do, can and can't do under preemption. I don't know that we've always been guided very well by previous Counsel on this particular area, and so one of the things we should look at as a committee here is are we running into trouble and is there a better •• another way to do this, a better way to do this to accomplish the same thing we want to accomplish which is a very clear public safety goal, and I think an important goal for Suffolk County preemptively before these things become widespread use, watching lights change all over Suffolk County. In fact, I don't know if I even cosponsored this and I had asked you, I think I did and if I haven't I want to and I'll put on the record I want to be a sponsor. So I'm all in favor of it, but I think it's important that we look at doing this so it sticks, that a company that makes MIRTs can't come in and put us into court and show that we're preempted. I want to accomplish the goal but I do want to do it in a way that's legal, and I know even the sponsor has raised questions on legality on my legislation in the past and whether we should pass things out of here or whether was legal.

LEG. COOPER:

I knew this would come back to haunt me.

CHAIRMAN BINDER:

I can think •• I don't want to actually bring up those comments and I don't want to hold this up, but at the same time I think it's important that we do the right thing, we do it the right way.

MS. KNAPP:

This is a very difficult question to answer because I respect that the Suffolk County Legislature has many times probably pushed the envelope in the view of many lawyers and been successful in doing it and the people of this County have thereafter benefitted from the County Legislature's cutting•edge legislation.

To the extent that •• you know, I have to say that I probably am concerned about the preemption argument and our chances of success. Unless, of course, like many of these things, depending upon the Judge's view of sometimes they say the bad facts make bad law, good facts made bad law; a Judge may look at this and say that the public interest, the public safety interest is so strong that the Legislature was justified in attempting to use it's broader power under the State Constitution. However, the sort of pedestrian legal view would be that preemption is a strong argument.

CHAIRMAN BINDER:

Right, except •• I mean, the concern obviously would be by a court that would likely say •• they'd be opening a door. Well, they would be opening a big door for anything that could be considered public safety and then it's up to individual Judges as to whether the amount of safety from the public is •• here's another question; is there another way to accomplish what we want to accomplish? Is there another •• have we explored, have you explored, have we looked at other areas of the law in other ways that we could avoid preemption but accomplish what we're trying to accomplish which is an absolutely crucial goal? Within County Law, without going to the State and asking the State to pass it, because we could wait years for that and while we're waiting people could severely be killed, injured.

MS. KNAPP:

Without going to the State and asking for specific enabling legislation, this would be the only creative method of doing this.

LEG. LINDSAY:

Could I chime in on that?

CHAIRMAN BINDER:

Sure, Legislator Lindsay.

LEG. LINDSAY:

When we start going down this road and we start worrying about a law that we're passing, will the State try and preempt it; I mean, really isn't it our job to pass sensible legislation? If they think we're stepping on their toes, it's their job to come in to the fray and ••

CHAIRMAN BINDER:

Well, it wouldn't be the State, it would be probably the maker of the devices that would come in; no, but then we end up in lawsuits. If we generally •• if we think that we're preempted but we start going down the road of passing legislation generally because we want to, because we're preempted, I think it's a problem.

Now, what I was going to say on this particular legislation, I think what was said that a court might say I think is the only reason that I would actually vote this out today is because the public safety interest is so compelling that we have to take the chance to lose in court. But I think we'd have to be very careful, we should go down this road generally, that we should inviting legislation •• litigation against the County and causing us to have the credibility of our legislation be questioned constantly and also the cost of litigation. So I think we should avoid it when we can, but in the case where the facts •• and this case I think it's just so compelling and so dangerous for people to have these things that we're almost forced to go over that.

LEG. LINDSAY:

I think the public interest here is clear•cut and we went down this road before, as was pointed out.

CHAIRMAN BINDER:

I don't think it was as compelling.

LEG. CRECCA:

Mr. Chairman?

LEG. COOPER:

Mr. Chairman?

LEG. LINDSAY:

I think this is more compelling than the cell phone ban.

CHAIRMAN BINDER:

This is a lot more compelling, that's why I would go with this and that's why I wouldn't have gone •• had that been in front of me know I would vote against the merits also, but on this question I won't. Legislator Cooper then Legislator Crecca.

LEG. COOPER:

Well, I have to agree with both Legislator •• with all the testimony that I've heard so far. I believe that this is a case where public safety clearly has to trump preemption. I was cognizant of the preemption arguments when we were drafting the legislation, I thought very strongly that it was a risk worth taking; worst case, there may be some costs that would accrue if litigation did result.

But as in the case of the cell phone ban that I had authored several years ago, my ultimate goal, although I was hoping to make roads in Suffolk County safer I was also hoping to prompt the State into action. And exactly what I had predicted would happen did happen where Suffolk County enacted a ban on hand•held cell phones and they were followed within a matter of months by Nassau County, Westchester County, New York City was on the verge of doing it and New York State, because of their concern over patchwork quilt of differing laws from one County to another, that's finally what prompted them to act on bills that had been stuck in committee in Albany for upwards of eight to ten years.

In this case, there's no legislation pending in Albany on the MIRT device issue because this is a relatively new technology. But I am absolutely convinced that we need to take action

preemptively here in Suffolk County, but it is my hope that it will prompt New York State to follow suit.

CHAIRMAN BINDER:

Legislator Crecca •• or Counsel.

MS. KNAPP:

Just on the issue of preemption, I just recall looking at it, there is a reverse preemption clause in this so that if the State doesn't enact similar legislation by simple resolution we can.

CHAIRMAN BINDER:

(Inaudible).

LEG. CRECCA:

I just wanted to say that if I was to rule on this case, if it was to come before me in a hypothetical situation ••

CHAIRMAN BINDER:

Oh, oh, how could that happen, Legislator?

LEG. CRECCA:

I don't know, but I don't believe that we are preempted from doing this and those arguments were rejected by the Public Safety Committee, so I'll be voting yes. Thank you.

LEG. COOPER:

Thank you.

CHAIRMAN BINDER:

I appreciate your cell phone argument how it spread around New York state, and wrongheadedness also can spread quickly, that can happen.

LEG. LINDSAY:

(Inaudible).

LEG. CRECCA:

Motion to report out, please.

CHAIRMAN BINDER:

Motion to report we have and a second. All those in favor? Opposed? ***1568 is reported to the next meeting (VOTE: 5•0•0•0).***

1581•04 • Adopting Local Law No. 2004, a Local Law to strengthen screening requirements for day care providers (Viloria•Fisher). We have a motion •• oh, first let me ask Counsel, is there any •• there's no legal question in ours?

MS. KNAPP:

No, this simply puts an extra layer of requirement on the day•care centers that we contract with.

CHAIRMAN BINDER:

No civil rights questions, right.

MS. KNAPP:

No, not at all.

CHAIRMAN BINDER:

We have a motion by Legislator Crecca, second by Legislator Lindsay to report. All those in favor? Opposed? ***1581 is reported (VOTE: 5•0•0•0).***

1637•04 • Adopting Local Law No. 2004, a Local Law to authorize the establishment of fees in the Department of Health Services, Division of Medical•Legal Investigations and Forensic Sciences for requests for cremation approvals and autopsy reports (Presiding Officer at the Request of the County Executive). That's not Kosher. All those •
• motion by Legislator ••

LEG. CARACCILO:

Kosher?

CHAIRMAN BINDER:

It's not, you can't cremate, Jewish law; you learned a new Jewish law. Legislator Caracciolo, motion, second by Legislator Crecca to report 1637. All those in favor? Opposed? ***It's reported to the floor for the next meeting (VOTE: 5•0•0•0).***

1686•04 • Adopting Local Law No. 2004, a Charter Law to ensure due deliberation of legislation (Montano). Is there any question? I don't think there's a legal question on this one.

LEG. CARACCIOLO:

Explanation.

MS. KNAPP:

I should probably mention that the County Attorney raised an objection to this that I truly disagreed with.

LEG. CARACCIOLO:

That's a surprise.

CHAIRMAN BINDER:

She said she didn't like it.

MS. KNAPP:

No, sometimes they do raise very valid points. On this one I disagreed with her, I think that you can require an explanation on a CN.

LEG. CARACCIOLO:

Do we have a motion?

LEG. COOPER:

Motion.

CHAIRMAN BINDER:

We have a motion by Legislator Cooper, second by Legislator Caracciolo to report 1686. All

those in favor? Opposed? ***It's reported to the floor (VOTE: 5•0•0•0).***

Home Rule No. 3•2004 • Home Rule Message requesting the New York State Legislature to amend the Suffolk County Tax Act (Senate Bill S6107) (Carpenter). This was just discussed in the last committee, I don't think there's a legal question in terms of asking for this ability. This is a change of the tax act on second half filing of late taxes, the onerous penalty would go back to the beginning of the first half and they accrue all the way, so you get •• the person who missed by a week would get hit with a penalty that was more than a half a year and very onerous, and so this is to change that. We have a motion by Legislator Caracciolo, second by Legislator Crecca. All those in favor? Opposed? ***Home Rule 3 is reported out (VOTE: 5•0•0•0).***

LEG. CARACCILO:

Even though it's a one house bill.

CHAIRMAN BINDER:

Sense 60•2004 • Sense of the Legislature resolution in opposition to the enactment of an additional Real Estate Transfer Tax (Binder). I don't usually ask legal questions on these things because they're just Sense Resolutions. I'll make the motion to report out, second by Legislator Crecca. All those in favor? Opposed?
Sense 60 is reported (VOTE: 5•0•0•0).

Is there anything else to come before the committee? If not, motion by myself, second by Legislator Crecca to adjourn. All those in favor? Opposed? We're adjourned.

(*The meeting was adjourned at 4:04 P.M. *)

***Legislator Allan Binder, Chairman
Rules Committee***

_ _ • Denotes Spelled Phonetically